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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 711

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION, PETITIONERS

vs.

WILSON & CO., INC., SWIFT & COMPANY and ARMOUR AND COMPANY

COMMENTS OF WILSON & CO., INC., et al.

Re: PETITION OF UNITED STATES OF AMERICA, et al., FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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La Salle Street Press—Chicago 10

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Wilson & Co., Inc., Swift & Company and Armour and Company (the "meatpackers") submit this memorandum principally (i) to clarify for the Court, and to correct any misconceptions arising from the Petition for Writ of Certiorari, the scope of the appeal brought by them in the United States Court of Appeals for the Seventh Circuit from the orders entered by the Federal Communications Commission ("F.C.C.") in F.C.C. Docket Nos. 11645 and 11646 and (ii) to request that the application for writ of certiorari and any action with respect thereto not be permitted to delay the proceeding in the Seventh Circuit.

The Petition for Writ of Certiorari, which seeks a modification of the injunction order entered by the Court of

Appeals, is predicated in part upon the premise that the Petition for Review filed in the Seventh Circuit is limited in scope to a review of only that portion of the F.C.C. orders which deal with rates for telegraph-grade private line services. As the meatpackers have heretofore advised the Seventh Circuit,[1] this premise is true with respect to the relief requested in the Petition for Review. However, it is important to distinguish between the scope of the appeal and the prayer of the petition. While the meatpackers have limited their complaint solely to the charges prescribed for telegraph-grade service, they have done so upon grounds which challenge the validity of the F.C.C. orders in their entirety.

For example, without enumeration of each of the grounds for the appeal, the meatpackers have alleged and argued at length in their opening brief, which was filed in the Seventh Circuit on December 23, 1963, that the 1955 cost study was out of date, hypothetical and contrary to the weight of the evidence. If this argument is sustained, the reduction in rates for telephone-grade services cannot stand, because such reductions are based upon the same 1955 cost study.

Recognizing that the scope of the appeal would reach not only charges for telegraph-grade services but rates for telephone-grade services as well, the meatpackers are taking the position, as they did in the Seventh Circuit, of not objecting to AT&T's position that the injunction should apply to the F.C.C. orders in their entirety. This position was taken and is now taken even though the meatpackers, as subscribers to telephone-grade private line services, would be entitled to a reduction in charges therefor because

[1] Petitioners' Reply to Motions for Modification of the Temporary Stay, filed August 12, 1963, p. 2.

the meatpackers do not wish to seem inconsistent in claiming that allocations of costs between telephone-grade and telegraph-grade services were proper for one purpose but improper for the other.

Accordingly, the meatpackers do not either support or object to the Petition for Writ of Certiorari. However, it is earnestly requested that the application for a writ of certiorari and any action with respect thereto shall not be permitted to delay or in any way interfere with the prosecution on the merits of the proceeding in the Seventh Circuit.

Respectfully submitted,

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